

Commissioner, 121 T.C. 290 (2003); Hall v. Commissioner, T.C. Memo. 2004-170; see also Treas. Reg. § 1.6015-5(b)(2)(i). In McGee v. Commissioner, 123 T.C. 314 (2004), the Tax Court issued an opinion with respect to the Two-Year Rule and refund offsets that curtails the ability to defend the Service's denial of claims based solely on the Two-Year Rule. Section III of this Notice sets forth procedures in response to the McGee opinion.

II. McGee Opinion

In McGee, the Service denied petitioner's claim for relief under section 6015(f) solely because the petitioner filed the claim more than two years after the Service offset a refund due to petitioner against petitioner's pre-existing joint liabilities. Petitioner admitted she was aware of the offset (because she received a refund offset notice), but argued that the Two-Year Rule did not apply to her case because she did not know that she could file a claim for relief under section 6015. The Tax Court concluded that the refund offset notice was a "collection-related" notice and that respondent's failure to provide petitioner with adequate notice of petitioner's right to file a claim for relief under section 6015, as required by section 3501(b)² of the Internal Revenue Service Restructuring and Reform Act of 1998, resulted in prejudice to petitioner. The Tax Court held that the Two-Year Rule did not start to run and that petitioner's claim was timely.

Prior to McGee, the Service considered a "collection-related notice" to be a notice that informed a taxpayer of the balance due for a particular tax year and warned the taxpayer that the Service would take collection action against the taxpayer if the taxpayer did not pay the tax liability in full. The Service did not treat a refund offset notice as a "collection-related notice," but treated it as an "accounting notice." An "accounting notice" is a notice that informs a taxpayer of an adjustment to the taxpayer's account, e.g., the taxpayer will not receive a claimed refund because the Service applied that refund to another liability. The Service has complied with section 3501(b) by including a brief discussion of relief from joint and several liability in a "stuffer"³ that the Service sends along with collection-related notices. Because the Service considered a refund offset notice to be an accounting notice and not a collection-related notice, the Service generally did not include a stuffer with refund offset notices.

² Section 3501(b) provides that the Secretary must provide notice of an individual's right to elect relief from joint and several liability in Publication 1 and in any "collection-related notices". Internal Revenue Service Restructuring and Reform Act of 1998, sec. 3201(a), Pub. L. 105-206, 112 Stat. 770 (1998).

³ The stuffer used with most collection-related notices is Publication 594, "What You Should Know About the IRS Collection Process." Notice 501, First Balance Due Notice, however, includes Publication 1, "Your Rights as a Taxpayer," as the stuffer. Both Publication 594 and Publication 1 inform taxpayers of the right to request relief from joint and several liability.

III. Procedures for Cases Impacted by the Holding of McGee.

The Office of Chief Counsel and the Service agree that the Service should inform a taxpayer of the right to file a claim for relief under section 6015 if the Service sends a refund offset notice to the taxpayer. Set forth below are procedures for handling cases impacted by McGee when the Service has denied a claim because the Two-Year Rule was triggered by a refund offset.⁴ The Service is changing its procedures so that in the future taxpayers will receive notice of their right to file a claim under section 6015 in refund offset cases. Once these changes in procedures are implemented, denials of claims for relief in cases involving claims filed more than two years after a refund offset should be defended. Until the changes in procedures are implemented, however, the Service should not deny, and Chief Counsel attorneys should not defend cases in which the requesting spouse filed the claim for relief more than two years after the refund offset unless the facts of the case are distinguishable from McGee.

a. Administrative Changes

The Service is implementing several administrative changes to procedures so that future refund offsets made by the Service will include notice to the taxpayer of the right to claim relief under section 6015. First, as of February 28, 2005, the Service is including the current version of Publication 1, which advises taxpayers of their right to elect relief under section 6015, with all refund offset notices. Although the language in Publication 1 complies with RRA 98 § 3501(b) because it advises taxpayers of the right to elect relief under section 6015, in order to promote fully effective tax administration, the Service has added language to Publication 1 regarding the two-year time limitation for filing a claim for relief under section 6015, and will include the revised publication with subsequent refund offset notices. Additionally, some time during the second half of 2005, the Service will add language directly on the refund offset notices that explains a taxpayer's right to seek relief under section 6015 and the two-year time limitation.

b. Procedures for Handling Pending and Future Tax Court Cases

Until further notice, as a general rule in Tax Court cases, unless the facts of the case are distinguishable from McGee, it should not be argued that a taxpayer's section 6015(f) claim is time barred. Furthermore, section 6015(b) and/or (c) cases in which the Two-Year Rule was triggered by a refund offset should not be defended. In compliance with McGee, the two-year period does not run with respect to the section 6015(f) claim unless the Service advises the taxpayer of the right to elect relief under section 6015. The Tax Court will, therefore, consider the merits of petitioner's section 6015(f) claim. Thus, arguing that any section 6015(b) or (c) claim is time barred will not resolve the

⁴ The number of cases involving this issue should diminish over time, because, until the new procedures are implemented, in cases factually similar to McGee, the Service will no longer deny claims solely based on the Two-Year Rule.

case, nor expedite resolution. Motions for summary judgment on this issue should not be filed and previously filed motions should be withdrawn.

If facts can be established that show that the petitioner had actual knowledge of the right to file a claim for relief under section 6015, and the petitioner had sufficient time after becoming aware of the right to file a claim, the case should be defended based on the Two-Year Rule. For example, if the petitioner contacted the Service after receiving the refund offset notice, and, in response the Service discussed relief under section 6015 and sent the petitioner a Request for Innocent Spouse Relief (Form 8857), and the petitioner then waited more than two years to file the claim, the argument that the claim was untimely should be pursued. The administrative file should be reviewed to determine if the Service provided the petitioner with any information regarding the right to request relief from joint and several liability, or whether the petitioner was otherwise aware of that right contemporaneous with the refund offset. If appropriate, discovery should be conducted to determine whether the Service apprised the petitioner of the right or the petitioner was otherwise aware of the right to seek relief under section 6015 on or about the time of the offset.

For cases in which previous administrative consideration was limited to the Two-Year Rule issue and the Service has not made a determination on the merits of the case, the Cincinnati Centralized Innocent Spouse Operations (CCISO) unit should consider the merits of the section 6015 claim. Normally, when a newly docketed case is received in which CCISO made the determination, the original file should be requested from CCISO. In newly docketed cases where the Two-Year Rule issue is implicated, the administrative file should be requested only after CCISO completes its determination on the merits. In the interim, you should request that CCISO telefax the claim for relief from joint and several liability (Form 8857) with all the attachments, along with the Final Notice of Determination, so that a timely answer can be filed. If the Chief Counsel Attorney has the file, a request for CCISO to make a determination regarding relief should be sent to:

IRS- CCISO
Stop 840F
P.O. Box 120053
Attn: Department One Manager
Covington, KY 41012

Requests should be marked "EXPEDITE-TAX COURT CASE PENDING" and include the Form 8857, the Tax Court petition, and any other relevant documents.

